

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

LARRY CARTER,

Plaintiff,

V.

THE ADVISORY GROUP, INC.,

Defendant.

CASE NO. 8:06CV603

ORDER

This matter is before the Court on the Plaintiff's Motion to Compel Payment of Funds into Court and to Compel the Examination of Judgment Debtor. (Filing No. 167). The Court has reviewed the Plaintiff's Motion and supporting briefs and index of evidence (Filing Nos. 167-169 and 173) as well as the Defendant's brief in opposition to the motion (Filing No. 170).

On July 22, 2008, the jury in this case returned a verdict for the Plaintiff in the amount of \$1,037,500.00. (Filing No. 157). A Writ of Garnishment directed to Wells Fargo Bank, N.A., was issued by the Clerk of the Court on August 25, 2008. (Filing No. 163). On September 3, 2008, this Court entered a Judgment against the Defendant, The Advisory Group, Inc., in the amount of \$1,037,500.00, with interest accruing at the rate of 2.17% annum, until paid in full, together with the taxable costs of the action. (Filing No. 164).

The Plaintiff has moved this Court, pursuant to Neb. Rev. Stat. § 25-1029, for an order authorizing the garnishee, Wells Fargo Bank, to remit assets of the Defendants in the amount of \$89,780.84 which it is holding pending a court order directing turnover. The Plaintiff also has moved the Court to require The Advisory Group to pay to the Court the \$450,000.00 mentioned by Defendant's counsel in his opening statement at trial. In addition, the Plaintiff has moved the Court for an order requiring David Willensky to appear for a debtor's exam before this Court. Finally, the Plaintiff requests an order forbidding the

Defendant from transferring or interfering with any of its property not exempt from execution.

As the Defendant correctly points out in its brief, the Plaintiff sought a Writ of Garnishment prior to the entry of a Judgment by the Court. However, no timeliness objection was made by either the Defendant or the Garnishee, Wells Fargo Bank, N.A. The Defendant has not been prejudiced and I will order that the \$89,780.84 held by Wells Fargo Bank, N.A., be deposited with the Clerk of the Court and applied in partial satisfaction of the judgment entered against The Advisory Group.

In his reply brief in support of his Motion to Compel Payment of Funds into Court and to Compel the Examination of Judgment Debtor (Filing No. 173), the Plaintiff has requested that the Court allow for the presentation of a brief oral argument on his Motion (Filing No. 167). The Defendant has not filed any opposition to the request for oral argument. The Court will allow brief oral argument by counsel for the parties to address the issue of compelling payment of the \$450,000.00 that Plaintiff alleges is being held in escrow; the issue of requiring David Willensky to appear before this Court for the purposes of a debtor's examination pursuant to Neb. Rev. Stat. § 25-1565; and the related issue of identifying the appropriate individual(s) to be deposed with respect to identifying the location of the Defendant's assets.

Plaintiff filed a Praecipe for Writ of Execution (Filing No. 166) with a draft Writ of Execution attached (Filing No. 166-2) on September 11, 2008. It has come to the Court's attention that the proposed Writ of Execution has not been issued by the Clerk of the Court, because it was prepared for the signature of a judicial officer. The Court will provisionally strike Filing No. 166 and allow the Plaintiff to re-file his Praecipe with a revised Writ of Execution attached.

Accordingly,

IT IS ORDERED:

1. The Plaintiff's Motion to Compel Payment of Funds into Court and to Compel the Examination of Judgment Debtor. (Filing No. 167) is granted, in part, and deferred, in part;
2. Wells Fargo Bank is hereby ordered to turn over the funds held on behalf of The Advisory Group in the amount of \$89,780.84 to the Clerk of the Court, with such funds to be applied to partial satisfaction of the judgment entered against The Advisory Group in this action;
3. The Plaintiff's request for oral argument included in his reply brief (Filing No. 173) is granted;
4. Oral argument is scheduled on the matter of the Plaintiff's Motion to Compel Payment of Funds into Court and to Compel the Examination of Judgment Debtor (Filing No. 167) on the 12th day of November, 2008, at 1:30 p.m., with arguments of the parties not to exceed a total of one hour;
5. The Clerk of the Court shall provisionally strike the Praeipe for Writ of Execution (Filing No. 166); and
6. Plaintiff is granted leave to re-file the Praeipe with a revised Writ of Execution.

Dated this 6th day of November, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge